


Below is an Order of the Court.



PETER C. McKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)
PETER SZANTO,) Bankruptcy Case No.
) 16-33185-pcm7
)
) ORDER DENYING SECOND MOTION
) FOR DISQUALIFICATION (DOC. 569)
)
Debtor.)
_____)

In May of 2018, debtor Peter Szanto filed a Motion for Disqualification of Honorable Judge Peter C. McKittrick (the First Motion). Doc. 479. The Court entered an order denying the First Motion on June 12, 2018 (the First Order). Doc. 501. On September 5, 2018, Debtor filed a Second Motion for Disqualification of Honorable Judge Peter C. McKittrick (the Second Motion). Doc. 569. The Second Motion was filed in the above-captioned main case and requested by Debtor to be cross-docketed in all related adversary proceedings. To more expeditiously reach the merits of Debtor's motion, the court accedes to Debtor's request to cross-docket the Second Motion in all open, related adversary proceedings, assuming, without deciding, that Debtor has

1 standing to file this motion in all open, related adversary proceedings
2 and without prejudice to any future ruling regarding Debtor's standing in
3 any particular adversary proceeding.

4 As with the First Motion, Debtor relies on 28 U.S.C. § 144 and 28
5 U.S.C. § 455 and seeks recusal on the basis of my alleged impartiality,
6 bias and prejudice. The First and Second Motions are verbatim the same
7 in many, if not most, respects. To the extent the Second Motion restates
8 arguments raised in the First Motion, those arguments are rejected for
9 the reasons stated in the First Order.

10 Debtor makes the following arguments in the Second Motion, which I
11 find unpersuasive.

12 First, Debtor argues that I never ruled on his invocation of 28
13 U.S.C. § 144 in the First Motion. That statute provides, in part:

14 Whenever a party to any proceeding in a district court makes and
15 files a timely and sufficient affidavit that the judge before whom
16 the matter is pending has a personal bias or prejudice either
17 against him or in favor of any adverse party, such judge shall
proceed no further therein, but another judge shall be assigned to
hear such proceeding.

18 28 U.S.C. § 144 (Emphasis added). Debtor's statement in the Second
19 Motion that I never considered § 144 in ruling on the First Motion is
20 false. The First Order states: "It is well established that 28 U.S.C. §
21 144 does not apply to bankruptcy judges. In re Goodwin, 194 B.R. 214, 221
22 (9th Cir. BAP 1996)." First Order, p. 2. See also In re Haas, 292 B.R.
23 167, 175 (Bankr. S.D. Ohio 2003)(citing "substantial body of case law
24 holding that 28 U.S.C. § 144 applies only to district court judges and
25 does not govern motions for recusal of a bankruptcy judge).

26 Second, Debtor insists recusal motions must be considered and ruled

1 on by a judge other than the judge whose impartiality is being
2 questioned. Debtor is mistaken, as I explained in the First Order. See
3 First Order, p. 2. See also In re Silba, 624 F.2d 864, 867-68 (9th Cir.
4 1980)(motion for recusal under § 455 is decided by the judge whose
5 impartiality is being challenged); United States v. Ford, 293 F. Supp. 3d
6 1138, 1139-40 (E.D. Cal. 2018)(same).

7 Third, Debtor argues that the "situation in Judge McKittrick's court
8 has deteriorated exponentially since" the First Motion and that I
9 displayed "deep-seated favoritism or antagonism" at a hearing held on
10 August 23, 2018. Second Motion, pages. 6-8. The hearing on that date was
11 a hearing on the chapter 7 trustee's motion for turnover of estate
12 property and contempt. Doc. 533. I granted the trustee's motion for the
13 reasons stated on the record at the August 23 hearing. See Doc. 559.
14 Debtor, in the Second Motion, complains that I made erroneous evidentiary
15 rulings and mismanaged the conduct of the August 23 hearing in various
16 ways, including by denying his request to continue the hearing.

17 The test for evaluating bias or prejudice under § 455 is an
18 objective one, "whether a reasonable person with knowledge of all the
19 facts would conclude that the judge's impartiality might reasonably be
20 questioned." In re Goodwin, 194 B.R. 214, 222 (9th Cir. BAP 1996).

21 [O]pinions formed by the judge on the basis of facts introduced or
22 events occurring in the course of the current proceedings, or of
23 prior proceedings, do not constitute a basis for a bias or
24 partiality motion unless they display a deep-seated favoritism or
25 antagonism that would make fair judgment impossible. Thus, judicial
26 remarks during the course of a trial that are critical or
disapproving of, or even hostile to, counsel, the parties, or their
cases, ordinarily do not support a bias or partiality challenge.
They may do so if they reveal an opinion that derives from an
extrajudicial source; and they will do so if they reveal such a high
degree of favoritism or antagonism as to make fair judgment

1 impossible.

2 Liteky v. United States, 510 U.S. 540, 555 (1994)(emphasis in original).
3 Judicial rulings alone almost never constitute grounds for recusal. Id.
4 I conclude that a reasonable person, with knowledge of all the pertinent
5 facts, would not reasonably question my impartiality based on my
6 courtroom conduct or comments. Moreover, my comments and conduct in this
7 case do not reveal a deep-seated antagonism towards Debtor that makes
8 fair judgment impossible.

9 Therefore, for the reasons stated above,

10 IT IS HEREBY ORDERED that the Second Motion is DENIED.

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12 cc: Peter Szanto
13 Chapter 7 Trustee
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